

AMENDED IN SENATE APRIL 13, 2011

AMENDED IN SENATE APRIL 5, 2011

SENATE BILL

No. 365

Introduced by Senator Lowenthal

February 15, 2011

An act to amend ~~Sections 23001 and 23035 of, and to add Section 23024.5 to, Section 23036 of~~ the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 365, as amended, Lowenthal. Deferred deposit ~~transactions; database; transaction recision;~~ *transactions.*

Existing law, the California Deferred Deposit Transaction Law, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in the business of making or negotiating deferred deposit transactions, as defined. ~~Existing law authorizes a licensee to defer the deposit of a customer's personal check for up to 31 days and provides that the face amount of the check shall not exceed \$300.~~ Existing law requires an agreement to enter into a deferred deposit transaction to be in writing and to include specified information and disclosures. *Existing law provides that a licensee shall not enter into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect.* A willful violation of the California Deferred Deposit Transaction Law is a crime.

This bill would ~~require~~ *declare the intent of the Legislature to enact legislation that would authorize* the commissioner to ~~implement a database that enables a licensee to receive specified information~~

regarding a consumer's history with deferred deposit transactions. The bill would require the commissioner to implement the database on or before September 1, 2012, unless specified conditions exist that do not allow for the implementation. The bill would authorize the commissioner to contract with a 3rd-party provider to operate the database. The bill would authorize the commissioner to adopt rules to establish the database and for the retention, archiving, and deletion of the information entered into, or stored by, the database. The bill would authorize the commissioner to impose a fee on licensees for the reasonable regulatory costs of the commissioner associated with the administration of the database, as specified. The bill would impose various requirements on licensees relative to information that would be required to be reported to the database, if it is developed and implemented. The bill would also authorize customers to rescind a deferred deposit transaction at no cost if the customer notifies the licensee of the intent to rescind and returns the proceeds of the transaction, as specified, and would require certain disclosures in that regard. Because a willful violation of these requirements by a licensee would be a crime under the California Deferred Deposit Transaction Law, the bill would impose a state-mandated local program contract with a qualified 3rd-party provider for the implementation of a database to aid in the enforcement of the California Deferred Deposit Transaction Law. The bill would also clarify that a licensee shall not enter into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect with any licensee.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes-no.
State-mandated local program: yes-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation that would authorize the Commissioner of Corporations
- 3 to contract with a qualified third-party provider for the
- 4 implementation of a common database with real-time access

1 *through an Internet connection for licensees, as defined in Section*
2 *23001 of the Financial Code, to aid in the enforcement of the*
3 *California Deferred Deposit Transaction Law.*

4 SEC. 2. *Section 23036 of the Financial Code is amended to*
5 *read:*

6 23036. (a) A fee for a deferred deposit transaction shall not
7 exceed 15 percent of the face amount of the check.

8 (b) A licensee may allow an extension of time, or a payment
9 plan, for repayment of an existing deferred deposit transaction but
10 may not charge any additional fee or charge of any kind in
11 conjunction with the extension or payment plan. A licensee that
12 complies with the provisions of this subdivision shall not be
13 deemed to be in violation of subdivision (g) of Section 23037.

14 (c) A licensee shall not enter into an agreement for a deferred
15 deposit transaction with a customer during the period of time that
16 an earlier written agreement for a deferred deposit transaction for
17 the same customer is in effect *with any licensee*.

18 (d) A licensee who enters into a deferred deposit transaction
19 agreement, or any assignee of that licensee, shall not be entitled
20 to recover damages for that transaction in any action brought
21 pursuant to, or governed by, Section 1719 of the Civil Code.

22 (e) A fee not to exceed fifteen dollars (\$15) may be charged for
23 the return of a dishonored check by a depository institution in a
24 deferred deposit transaction. A single fee charged pursuant to this
25 subdivision is the exclusive charge for a dishonored check. No fee
26 may be added for late payment.

27 (f) No amount in excess of the amounts authorized by this
28 section shall be directly or indirectly charged by a licensee pursuant
29 to a deferred deposit transaction.

30 (g) A licensee shall be subject to the provisions of Title 1.6C
31 (commencing with Section 1788) of Part 4 of Division 3 of the
32 Civil Code.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, April 5, 2011. (JR11)**

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